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March 27, 2009

Via Electronic Filing and First Class Mail

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Docket No. R-1343

Dear Ms. Johnson:

The following comments are submitted on behalf of City Bank, a community bank headquartered in Lubbock, Texas with over 40 facilities and more than 25 ATMs serving 18 communities in Texas. City Bank offers overdraft protection to its customers included within a bundled package of free services. Based on our experience, we would support an "opt-out" notice at time of account opening or in the case of existing customers an opt-out election that may be exercised by a notice to the bank. Opt-out should be offered on an "all or nothing" basis for all channels due to the many technical challenges for both customers and the bank.


Before addressing the specific proposals, we would like to briefly provide a description of the occasional overdraft privilege program as implemented by City Bank. Our customers already receive an opt out notice that is on a separate document as part of the account opening process. There is no separate "overdraft fee" for the program. Rather, the customer is charged the same amount whether the item is covered by the overdraft protection program or returned unpaid to the merchant. Both paper check and electronic items are covered. With our headquarters in a university town, we find that the electronic coverage is particularly attractive to many of our customers.

The debit cards issued to our customers can be used at ATMs and point of sale both on a signature basis and PIN based on either the customer's choice or the business capabilities. As noted in the preamble discussion to the rule, from time to time stand-in processing is necessary, typically for two hours or less and usually in the middle of the night during maintenance windows.

With regard to debit holds, City Bank may place such a hold for up to three days on a signature transaction that has been pre-authorized. At that time, even if the transaction has not settled, the hold will drop off. Again as noted in the preamble, it is important that the rule acknowledge the potential for stand-in authorizations even where an "opt

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out” would affect a transaction. The rule should not punish an institution for honoring a pre-authorization even when it will overdraw an account for a customer who has otherwise opted out.

We also strongly support the portion of the rule that acknowledges that a customer may not have adequate funds on deposit to cover an ATM withdrawal or a one-time debit card transaction even though at the time the transaction was authorized the funds were available. Permitting those to be covered by overdraft protection acknowledges that the institution has a duty under the network rules to honor pre-authorizations. Even if a customer has opted out of overdrafts, those transactions must be paid as contracted for. Permitting an NSF charge on those items simply acknowledges the cost to the institution and the importance of compliance with the card system rules. It is possible for funds to appear to be available to cover a pre-authorized transaction and then later the balance to be reduced before settlement as a result of a charge-back or other unforeseen transactions. With expedited processing as a result of Check 21, this is becoming less common. However, these scenarios do occur from time to time. Permitting the institution to assess the fee is appropriate for these unusual situations which are not due to any failure of the bank’s procedures and policies

One important change to the use of debit cards at ATMs is the requirement in the current rules that if a balance is shown at an ATM transaction then that balance must be the actual available balance. Under bulletins from PULSE and our understanding of the commentary to Regulation DD, providing the balance with overdraft courtesy added would create a promotion of overdraft protection necessitating additional disclosures. It is our understanding that the PULSE network and other ATM networks cannot provide those extensive additional disclosures at all ATMs such as foreign ATMs, i.e., ATMs not operated by the cardholders’ bank. City Bank can provide the additional disclosures to our cardholders at our proprietary ATMs, but we do not have control of foreign ATMs and what is disclosed. As a university town institution, we believe that many of the small transactions triggering a fee in excess of the value of the transactions occurred at ATMs when small cash amounts were withdrawn by a consumer who believed that their balance was large enough to cover the cash withdrawal. We would respectfully suggest that this is no longer a significant issue.

As noted above, City Bank already provides an opt out opportunity to its customers. Thus, as to our existing customers, we do not believe that there is any need for a separate opt-out notice to be provided to them at this time. Rather, the opt-out notice should be provided going forward to all new customers either at account opening or before overdraft courtesy is added to the account.

The opt-out choice should be on an “all or nothing” basis. It would be expensive and it is not currently possible with the networks, merchants, and processors involved in debit card transactions for us to track opt-out on a transaction type basis. Furthermore, we strongly agree that opt-out should not be extended to recurring debit card and automated clearinghouse (“ACH”) transactions. Typically, those are payments that have been set up by our customers to cover their mortgage or utilities and are exactly the sort of transactions that customers most need to have protected. We believe that permitting an opt-out on ACH transactions would be confusing and not well understood. Therefore, we applaud the proposed rule, which does not apply to these ACH transactions and recurring debit card transactions..

The model form is extremely helpful in assuring consistency of disclosure to our customers. Generally, the form tracks the requirements in the rule and is in plain language. We have a few observations relating to the form, however.

First, it begins with the statement "We currently provide overdraft coverage for your account." That statement will not be true as to new accounts, the situation in which this is most likely to be used. We recommend that that sentence be stricken. Then the next sentence should be modified to appropriately define overdraft coverage, assuring that the voluntary and discretionary nature is clearly disclosed. In the next section regarding "Your right to opt-out of overdraft coverage," we strongly recommend that the sentence in brackets be included. It is important that consumers understand the consequences of opting out.

In the section describing other ways of coverage, we would suggest that it is important to include an explanation that the alternatives may also be less flexible. For example, linking accounts is limited by Regulation D if the other account is a savings account. Therefore, it would be appropriate to include the following sentence: "However, there may be limitations in such alternative services."

Finally, it would be helpful to include model language for joint account opt-out. We agree that any one party should be able to opt-out for all parties in a joint account. It is technologically impossible to allow one to opt-out and the other to still be covered. Therefore, the consequence of one party opting out should be clearly explained in this form.

Thank you for the opportunity to comment on this important matter. City Bank strongly believes in providing superior service to its customers. Occasional Overdraft Privilege is an important part of that service. A rational rule that takes into consideration technological challenges is critical so that we can continue to provide that service in a prudent and consumer friendly manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Cory Newsom". The signature is fluid and cursive, with the first name "Cory" and last name "Newsom" clearly distinguishable.

Cory Newsom
President/CEO